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In The
Supreme Court of the United States
October Term, 1997

SUPERVALU INC.
and
MORAN FOODS, INC., d/b/a **SAVE-A-LOT, LTD.**,
Petitioners,
v.
DISCOUNT FOODS, INC.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

OPPOSITION OF RESPONDENT DISCOUNT FOODS, INC. TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Contrary to Petitioners' formulation, the only question presented by this case is:

> Whether the Supreme Court of Alabama committed error of constitutional dimension in determining that two parties, signing a supply agreement containing an arbitration clause in February 1995, intended thereby to submit to arbitration a dispute between them concerning an intentional tort, wholly unrelated not only to the specific contract but to their relationship as purchaser and seller, and which had already arisen in August and September of 1994.

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STATEMENT OF THE CASE

Petitioner Supervalu Inc. ("Supervalu") is a supplier of groceries for retail distribution; Respondent Discount Foods, Inc. ("Discount Foods") is a chain of retail grocery stores. On February 24, 1995, Supervalu and Discount Foods executed a contract for the sale and delivery of groceries at one of Respondent's stores: at 21st Street and Gault Avenue in Fort Payne, Alabama. *See* Petition for a Writ of Certiorari ("Cert. Pet."), pp. 13a-19a.

The February 1995 contract, styled a "Retailer's Agreement," describes the relationship between the parties as "that of arm's length independent buyer and independent seller," and disclaims any other kind of relationship, including any "of special trust and confidence." ¶ D; Cert. Pet, p. 15a. It is, in short, a standard contract for the purchase and sale of goods, albeit goods intended for resale at the buyer's retail establishments.[1]

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[1] In an effort to make the Retailer's Agreement -- Petitioner Supervalu's standard form document -- into something more than what it quite obviously is, Petitioners contend that it "creates numerous rights and obligations for" the parties. Cert. Pet., p. 2. Specifically, Petitioners argue that the Agreement "permits" Supervalu to enter into similar contractual arrangements with other retailers, or to compete with Respondent directly on its own account. *Id.*, p. 3. But even by its own language, the Agreement does not "permit" Supervalu to do any such thing. Instead, it includes the obligation that Respondent "[a]cknowledge" Supervalu's rights, which exist entirely independently of the Agreement. *See* ¶ B.3; Cert. Pet., p. 14a.

The contract also contains an arbitration clause. ¶ F; Cert. Pet., pp. 16a-18a. In unusually broad language, the clause begins by providing that

> [a]ny controversy or claim arising between the parties, including, but not limited to, disputes relating to this Agreement, shall be resolved by binding arbitration. . . .

This case is about whether this provision brings within the scope of arbitration a dispute in which Respondent alleges that both Petitioners, together with Gregerson's, Inc.,[2] had committed certain intentional torts against it in August and September 1994, and specifically that they had interfered with Respondent's acquisition of the leasehold for a proposed new retail location in Anniston, Alabama.[3]

The subject matter of *Discount Foods, Inc. v. Supervalu et al.*, No. CV 96-411 (Cir. Ct. Calhoun Cty.) has nothing to do with the Retailer's Agreement of February 1995. Indeed, it has nothing to do with the relationship between Supervalu as "independent seller" and Discount Foods as "independent buyer." The dispute involves the

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[2] Gregerson's, Inc., is a chain of retail grocery stores that is a direct competitor of Respondent in its principal markets in Alabama. A party defendant below, Gregerson's has not joined in Petitioners' submission to this Court.

[3] The complaint filed before the Circuit Court for Calhoun County, Alabama, in Anniston, alleges specifically that the three defendants -- the two Petitioners and Gregerson's -- tortiously interfered with Respondent's contractual and business relations, unfairly competed with Respondent at common law, and negligently or deliberately disclosed its trade secrets. A copy of the Complaint is incorporated herein as an Appendix, pp. 1a-11a, *infra*.

claim that in the summer of 1994, Petitioner Supervalu and its subsidiary, Petitioner Moran Foods, Inc., d/b/a Save-A-Lot, Ltd., conspired together with Respondent's principal competitor to deprive Respondent of an unrelated, potentially profitable business opportunity.

It is this lawsuit that the Calhoun County judge held was subject to the arbitration provisions of the February 1995 Retailer's Agreement. The case was stayed pending arbitration, and Respondent sought a writ of mandamus from the Alabama Supreme Court to set aside the stay. The writ was granted, the State court concluding that "the arbitration provision found in the retail agreement[] between Discount Foods and Supervalu was not intended by the parties to force arbitration in regard to allegations of intentional torts that are unrelated to their contractual dealings." Cert. Pet., p. 2a. The court wrote that "[t]he parties' arbitration provision, although broad, cannot be construed to encompass intentional torts of the parties that are separate and distinct from the dealings that gave rise to the signing of the document containing the arbitration provision in the first place." Cert. Pet., p. 4a.

That is the decision the review of which on certiorari is now sought by Petitioners. Obviously there has been no determination by either court below of whether Respondent's underlying lawsuit is meritorious. No witnesses have been called and no evidence introduced. Whether Petitioners actually are tortfeasors, and Respondent their innocent victim, does not matter at this stage. The only issue resolved by the Supreme Court of Alabama was the arbitrability of this dispute, and that is the only issue now before this Court.

Petitioners contend here that what is at stake is the general question whether parties to an arbitration agreement can **ever** bring alleged intentional torts within its scope, or whether such allegations are somehow always and

automatically excluded. But that is not at all the issue confronted or decided by the court below. The issue, rather, was whether on **these** facts, in signing **this** Agreement, **these** parties intended to require submission of **this** dispute to arbitration. No evidence was presented by the party moving for a stay to show that such was their intention, and the law creates no presumption that parties to a contract providing for arbitration thereby waive all rights they might have to sue one another for anything, including events that had already occurred and were entirely independent of their contractual relationship.

For the following reasons, the decision of the Supreme Court of Alabama was correct, and in any event raises no issues of constitutional dimension that require the intervention of this Court. The Petition for a writ of certiorari should therefore be denied.

REASONS FOR DENYING THE PETITION FOR A WRIT

I. The Court Below Correctly Held As a Matter of Alabama Law That the Parties Never Agreed To Arbitrate Respondent's Intentional Tort Claims

This Court has taught -- in a series of cases that Petitioners somehow neglect to mention -- that "the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate **that dispute**." *First Options of Chicago, Inc. v. Kaplan*, 115 S. Ct. 1920, 1923 (1995) (emphasis added), *citing Mastrobuono v. Shearson Lehman Hutton, Inc.*, 115 S. Ct. 1212, 1216 (1995), and *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). It is crystal clear that Petitioner Supervalu and Respondent did not agree, on signing a contract for the

supply of groceries in February 1995, to arbitrate a dispute concerning unrelated intentional torts allegedly committed by one against the other in August and September 1994.

Petitioners, in reality, make no argument that the parties did intend the result that they now urge: that every non-contractual dispute between them of any nature or provenance must be submitted to arbitration. They rely instead -- exclusively -- on the literal language of Petitioner Supervalu's standard form Retailer's Agreement, and specifically on the provision that "**[a]ny** controversy or claim arising between the parties, including, **but not limited to**, disputes relating to this Agreement, shall be resolved by binding arbitration." ¶ F; Cert. Pet., p. 16a, emphasis added. Thus, Petitioners appear to argue that, so long as there is a "dispute" (which there most assuredly is here), and it involves Supervalu and Discount Foods, it is arbitrable.[4]

This argument is not reconcilable with **any** consideration of the intent of the parties. Yet in *First Options*, this Court not only defined the question of the extension of arbitration clauses in terms of a determination of what the parties actually agreed, but deferred to applicable State law principles governing the formation and interpretation of contracts for guidance on the extent to which the parties intentions are determinative in deciding the scope of their agreement. In *First Options* itself, the governing law was that of either Illinois or Pennsylvania, but the Court held that either body of law "would require the court to see whether the parties objectively revealed an intent

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[4] Three Justices of the Alabama Supreme Court appear to have accepted this argument, basing their dissenting opinion on the dictionary definition of the word "dispute," as if that were the only question for consideration. *See* Cert. Pet., p. 6a (Houston, Maddox, and See, JJ., dissenting).

to submit the [issue in dispute] to arbitration." 115 S. Ct. 1920, 1924.[5]

Alabama law, as interpreted and applied by the Supreme Court of that State, similarly looks to parties' intent to ascertain the content of their agreement. In a leading case, for example, following this Court's remand for consideration of precisely this issue, the court quoted the United States Court of Appeals for the 11th Circuit:

> [T]he question of whether a contract's arbitration clause requires arbitration of a given dispute remains a matter of contract interpretation. Such a determination rests on the **intent** of the parties. A party may not be required to arbitrate a dispute it did not agree to arbitrate.

Allied-Bruce Terminix Companies, Inc. v. Dobson, 684 So.2d 102, 107 (Ala. 1995) (emphasis added), *on remand from* 513 U.S. 265 (1995), *quoting Seaboard Coast Line R.R. v. Trailer Train Co.*, 690 F.2d 1343, 1348 (11th Cir. 1982).

Despite, therefore, the oft-enunciated presumption that arbitration is to be favored and that agreements to arbitrate should be liberally construed, *Moses H. Cone*

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[5] The specific question in *First Options* was whether a dispute as to arbitrability was itself arbitrable. But this Court held that the same criteria are to be applied to this question as to any other concerning the scope and coverage of contractual arbitration provisions: these require a determination of what the parties actually agreed. The Court summed up its conclusion in these words, of obvious relevance here: "arbitration . . . is a way to resolve those disputes -- but only those disputes -- that the parties have agreed to submit to arbitration." 115 S. Ct. 1920, 1924.

Memorial Hosp. v. Mercury Construction Co., 460 U.S. 1 (1983), the interpretation of the parties' agreement -- not just of their language -- remains the task of the judiciary. Before this Court, Petitioners make no argument that Supervalu and Discount Foods actually contemplated or expressly intended the arbitral resolution of disputes that had already arisen involving unrelated intentional torts. They contend, instead, that the mere use of the words "including, but not limited to, disputes relating to this Agreement," to describe the universe of arbitrable issues, establishes a kind of agreement *sub silentio* to arbitrate **any** contentious issue that might ever arise between those two companies: from a fender-bender between delivery trucks, to the alleged pilferage of trade secrets by a former employee of one later hired by the other, to their disagreement as neighboring landowners over the proper interpretation of local zoning ordinances.[6]

It does not follow from *Moses H. Cone* that there is a presumption in favor of the arbitrability of disputes independent of contractual agreements. It is counterintuitive to infer that, by the simple use of the words "but not limited to" in an arbitration clause, either party intended to waive its right to obtain judicial review of any and all contentious matters that might ever arise (or, here, that may ever have arisen) between them. Nor does any reported case cited by Petitioners suggest the contrary.

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[6] In the courts below, counsel for Respondent suggested that, on Petitioners' theory, suits over an act of arson or assault committed by a disgruntled worker for one party against the premises or personnel of the other would be arbitrable. Far from being ridiculous, as Petitioners there insinuated, this very inference would follow directly from the conclusion urged before this Court, and from the approach to the case taken by the dissenting justices in Alabama.

Petitioners profess to read the opinion below as suggesting an absolute "refusal" of the Alabama courts "to permit arbitration of intentional torts." Cert. Pet., p. 8.[7] They suggest that this Court "has not addressed the specific issue presented here, namely whether intentional tort claims may be arbitrated if the language of an arbitration clause is broad enough to encompass those claims." Cert. Pet., p. 10, footnote omitted. Here, however, Petitioners err twice: this Court **has** spoken to whether arbitration agreements of appropriate scope -- as evidenced by the intent of the parties -- may require arbitration of issues arising outside the terms of the contract itself: an example is *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967) (claim of fraud in the inducement held arbitrable). And the issue is not what happens if the agreement to arbitrate "is broad enough" to encompass the non-contractual dispute: it is what results when, as in this case, the agreement to arbitrate does **not** cover the wholly unrelated matter presented in litigation.

The court below did **not** hold that the mere nature of an intentional tort claim between the parties automatically removes it from the coverage of a contractual arbitration clause: it held that on this record, when there is no basis for concluding that the parties explicitly or implicitly agreed to arbitrate this particular dispute, it could not order them to do so.

It is surely true that at one time, the Alabama courts were highly reluctant ever to enforce what they termed "predispute arbitration agreements," in light of a "strong public policy" against their use. *Old Republic Ins. Co. v. Lanier*, 644 So.2d 1258, 1261 (Ala. 1994). But that position is no longer tenable under *Allied-Bruce Terminix*, and the

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[7] Surely there is no theory on which the opinion of the court below can be read as a refusal to **permit** arbitration. The issue is whether arbitration can be **compelled**.

Supreme Court of Alabama has clearly acceded to this Court's recognition of the federal policy generally favoring arbitration in cases reviewable under federal law. Alabama courts have repeatedly acknowledged their abandonment of the previously-articulated State convention, in favor of the strict application of State rules of contract formation. Specifically, in *Ex Parte Gates*, 675 So.2d 371 (Ala. 1996), the court noted that there is no longer a general presumption: *Allied-Bruce Terminix* "substantially changed arbitration law in Alabama," requiring that each case be addressed on its own terms. 675 So.2d 371, 374.

The court below properly applied Alabama law without reference to the pre-*Allied-Bruce Terminix* "strong public policy" against arbitration agreements in general, or against the application of arbitration provisions to intentional torts in particular. And it did so in a manner consistent with this Court's direction in *First Options*.

II. **The Decision of the Supreme Court of Alabama Is Entirely Consistent with the Federal Arbitration Act**

Petitioners argue that the decision of the Alabama Supreme Court violates either the letter or the spirit of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and specifically that it contradicts the "federal policy favoring" arbitration. Cert. Pet., p. 13. Their premise is that the Alabama court, instead of doing what it was supposed to do, blindly invoked "a state policy opposing arbitration of intentional tort claims." *Id.*, p. 11. That the court below neither mentioned such a policy, nor cited to any judicial decision from which such a policy could be inferred, is an inconvenience that Petitioners simply ignore.

Not only did the State court recognize that "any doubts concerning the scope of arbitratable [*sic*] issues

should be resolved in favor of arbitration," *Allied-Bruce Terminix*, 684 So.2d 102, 107, but it made express reference to this Court's articulation of that presumption in *Moses H. Cone Mem. Hosp.*, 460 U.S. 1, 24-25. Far from ignoring the proper rules of contract interpretation, the court below applied them: it asked whether the parties in fact agreed to arbitrate the dispute that was the subject of the underlying lawsuit, and concluded that they had not.

The key to the State court's resolution of the contract interpretation question is this:

> The parties' arbitration provision, although broad, cannot be construed to encompass intentional torts of the parties that are separate and distinct from the dealings that gave rise to the signing of the document containing the arbitration provision in the first place. To hold otherwise would allow persons signing broad arbitration provisions to commit intentional torts against one another, which torts are outside the scope of their contemplated dealings, without concern that they might have to answer for their actions before a jury of their peers.

Cert. Pet., p. 4a.[8] This is not a policy against the arbitrability of intentional torts in general; it is a finding that a broad arbitration clause must nevertheless be read as being limited to disputes -- presumably including disputes over allegations of intentional torts where appropriate -- with at least **some** relation to the contract.

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[8] If anything, the court's reasoning would appear to apply *a fortiori* in a case like this one, in which the alleged intentional tort giving rise to the complaint had **already** occurred when the agreement to arbitrate was signed.

There is, therefore, no inconsistency between the holding below and the Federal Arbitration Act. The presumption in favor of arbitration is only that -- a presumption -- and it does not obtain when there is no evidence that the parties intended a counterintuitive result. Petitioners' suggestion that federal policy is violated whenever, for any reason, a court finds a dispute to be outside the parties' agreement to arbitrate, is wholly unfounded in the Act or in the caselaw, and should be rejected.

The court below properly interpreted Alabama law, but even if it had not done so, there would still surely be no justification for the oversight of this Court. Even assuming that Petitioners were correct in their submission that the bare language of the arbitration clause should oust any consideration of the parties' intent, the proper conclusion would be only that the highest court of the State of Alabama erred in its application of the common law of that State. In no event is there a federal question, a misinterpretation of federal law or policy, a conflict between opinions of United States Courts of Appeals, or any need to establish binding precedent at the level of this Court.

III. **This Court Held in *First Options* That Interpretation of Arbitration Agreements Should Be Performed According to State Law**

Petitioners argue finally that this Court should take the opportunity presented by this case "to make consistent federal law concerning the interpretation of arbitration agreements." Cert. Pet., p. 13. Such a holding, they contend, would create confidence among commercial traders that arbitration clauses

> will be interpreted and enforced according to settled contract principles, as [9 U.S.C. § 2] requires, rather than according to the vagaries of state policies which restrict the arbitration of tort claims.

Cert. Pet., p. 15. To conclude otherwise, they say with perhaps a hint of hyperbole, would "render[] meaningless" "the principle of freedom of contract." *Id.*

The problem with this argument, that national uniformity is required to preserve the sanctity of contracts, is that this Court has already soundly rejected it. *First Options* stands for the proposition that

> [w]hen deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally [with a qualification not relevant here] should apply ordinary State law principles that govern the formation of contracts.

115 S. Ct. 1920, 1924, citations omitted. There is, in other words, no need for a consistent federal policy with respect to the interpretation of arbitration clauses, any more than there is such a need with regard to the construction of any other kind of contractual term whose interpretation might be the subject of civil litigation. State law governs such things in our federal system, and the fact -- if it is a fact -- that the highest courts of two sister States might come to different conclusions in a given situation does not compromise the Constitution, or otherwise imply the need to send out for the federal cavalry.

Respondent, of course, does not concede that the Supreme Court of any State would have taken a different view of the case at Bar from that contained in the decision of the Supreme Court of Alabama. In no opinion cited by

Petitioners, and in no reported decision of which undersigned counsel is aware, has a court interpreted an arbitration clause to embrace disputes entirely unrelated to the contract in which it was embedded. Granting Petitioners' point that the words "all disputes arising out of this agreement" are extremely broad, and that they may in the appropriate situation include the claim that the contract was breached, as it were, so brutally as to constitute an intentional tort, there must nevertheless be some connection between the contract and the alleged wrong.[9]

As the U.S. Court of Appeals for the Eleventh Circuit stated in *Gregory v. Electro-Mechanical Corp.*, 83 F.3d 382 (11th Cir. 1996), a case on which Petitioners principally rely, "[t]he law is clear that tort claims and claims other than breach of contract are not automatically excluded from a contractual arbitration clause." 83 F.3d 382, 383. The court below in this case did not hold that there was or should be such an automatic exclusion. But the *Gregory* dispute fell within the scope of the contract, while the instant dispute does not.[10]

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[9] In *American Recovery v. Computerized Thermal Imaging*, 96 F.3d 88, 93 (4th Cir. 1996), for example, the court of appeals directed arbitration of a dispute that did not "implicate" the parties' underlying contract, but which nevertheless had "a significant relationship" to it.

[10] The decision that probably provides the best hope for Petitioners is one they do not even cite: *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), in which this Court found Sherman Act claims to be arbitrable. But there is an all-important grounds for distinction: *Mitsubishi*, decided before *First Options*, arose under the contract, the Court expressly finding that the parties had evinced an intent that it be arbitrated.

The Retailer's Agreement between Petitioners and Respondent, which is reprinted at Cert. Pet., pp. 13a-19a, concerns the sale and purchase of groceries for a store in Fort Payne, Alabama. It was signed in February 1995. The dispute brought by Respondent before the courts of Calhoun County concerns allegations that Petitioners competed unfairly with Respondent in August 1994, not by withholding a supply of groceries, or by overcharging, or by delivering inferior goods, but by tortiously arranging for their own retail unit to procure a location in Anniston, Alabama, from which it could attempt to force one of Respondent's stores to incur substantial business losses.

The acquisition of the leasehold in Anniston in 1994 was not contemplated by, and did not come within the scope of, the Retailer's Agreement signed with respect to Fort Payne in 1995. That in the standard-form Agreement Respondent was caused to "acknowledge" that Petitioners were making no assurances of Respondent's profitability hardly can be said to bring an unfair competition lawsuit, as to which the operative events had already occurred, within the scope of the arbitration clause contained in a supply contract for a different location.

The Supreme Court of Alabama applied the rules of contract formation developed by the Alabama courts, just as it did in *Allied-Bruce Terminix*, *supra*, on remand, and in *Carl Gregory Chrysler-Plymouth, Inc. v. Barnes*, 700 So.2d 1358 (Ala. 1997).[11] It asked whether the parties had agreed

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[11] "The first task of this Court, when reviewing an arbitration provision, is to determine whether the parties agreed to arbitrate the dispute at hand. We find no agreement to arbitrate the dispute in this case." 700 So.2d 1358, 1360.

to arbitrate the dispute before the court, and answered that they had not.

No federal law or policy is violated by that holding, and there is no overriding need for the intervention of this Court to "standardize" what it has expressly left to the States to develop, according to their own rules of contract formation, interpretation, and enforcement.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: July 17, 1998

APPENDIX

IN THE CIRCUIT COURT IN AND FOR CALHOUN COUNTY, ALABAMA

DISCOUNT FOODS, INC., an Alabama Corporation,	)	
Plaintiff,	)	
vs.	)	Civil Action No. CV96-411
SUPERVALU, A Delaware Corporation; Moran Foods, Inc. d/b/a SAVE-A-LOT, LTD, A Missouri Corporation; GREGERSON'S, INC., an Alabama Corporation,	)	

There may be other entities whose true names and identities are unknown to the Plaintiff(s) at this time who may be responsible for the claim(s) set forth herein and who may be added by amendment by the Plaintiff (s) when their names and identities are accurately ascertained by further discovery. Until that time, the Plaintiff (s) will designate these parties in accordance with ARCP 9(h). The word "entity" as used herein is intended to refer and include any and all legal entities including persons, any and all forms of partnership, any and all types of corporations and unincorporated associations. The symbol by which these party(ies) defendants are designated is intended to include descriptive characterization of the symbol applies to more than one entity. In the present action, the party Defendants which the Plaintiff(s) must include by descriptive characterization are as follows:

Defendant A, the correct name of the legal entity referred to herein as SuperValu; Defendant B, the correct name of the legal entity referred to herein as Moran Foods, Inc. d/b/a Save-A-Lot Ltd; Defendant C, the correct name of the legal entity referred to herein as Gregerson's, Inc.; Defendant D, E, F, G and H being those persons or entities who manage, supervise, and/or control any aspect of the operations of Defendants A, B, and C having a bearing on this case; Defendants I, J and K, being those individual employees of Defendants A, B and C who made the policy decisions creating the situation made the basis of this lawsuit, all of whose true names are otherwise unknown to the Plaintiffs but will be added by amendment when ascertained,

Defendants.

COMPLAINT

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1. Plaintiff Discount Foods, Inc. ("Discount Foods") is an Alabama Corporation with its principal place of business in Anniston, Calhoun County, Alabama. Discount Foods is in the business of owning and operating retail grocery stores and currently has 11 locations in the States of Alabama and Georgia, employing some 300 people.

2. To the best of Plaintiff's knowledge and belief, Defendant SUPERVALU is a Delaware corporation with its headquarters in Minneapolis, Minnesota. SUPERVALU is involved in numerous aspects of the distribution and marketing of groceries throughout the United States, through divisions and subsidiaries, and in particular a "Southeast Division" which has its offices and

does business in the State of Alabama. Its grocery wholesale operations are among the largest in the world.

3. Defendant Moran Foods, Inc. d/b/a Save-A-Lot Ltd ("Save-A-Lot") is a subsidiary-of Defendant SUPERVALU. It is a Missouri Corporation with its headquarters in St. Louis, Missouri. Save-A-Lot is a franchiser and operator of retail grocery stores and has offices and conducts business throughout the United States and, in particular, in the State of Alabama.

4. Defendant Gregerson's Holdings, Inc. ("Gregerson's") is an Alabama corporation doing business in Calhoun County, Alabama. Gregerson's is a competitor of Plaintiff in numerous retail markets in Northern Alabama, including Anniston and Calhoun County.

5. Defendant A, being the correct name of the legal entity referred to herein as SuperValu; Defendant B, being the correct name of the legal entity referred to herein as Moran Foods, Inc. d/b/a Save-A-Lot Ltd; Defendant 0, being the correct name of the legal entity referred to herein as Gregerson's, Inc. ; Defendants D, E, F, G and H. being those persons or entities who manage, supervise, and/or control any aspect of the operations of Defendants A, B, and C having a bearing on this case; Defendants I, J and K. being those individual employees of Defendants A, B and C who made the policy decisions creating the situation made the basis of this lawsuit.

6. Plaintiffs aver that all fictitious party Defendants of whose true names are otherwise unknown to the Plaintiff at this time will be added by amendment when ascertained.

7. Plaintiff Discount Foods began its business operations on October 5, 1985, and since March, 1987, has managed a grocery outlet at 3103 McClellan Boulevard in Anniston, Calhoun County, Alabama. The freehold is owned by K-Mart, which operates a general merchandise retail store in a neighboring location. The lessee is Defendant SUPERVALU, which, in turn, subleases to Plaintiff.

8. The aforesaid lease and sublease are coterminous. They are scheduled by their terms to expire in November, 1998. For the current calendar year, Plaintiff pays SUPERVALU weekly rental of $1,269.23, from which SUPERVALU pays the lease payment to K-Mart. The difference, an override of approximately $500 per month, is profit to SUPERVALU, which has essentially no expenses in connection with its leasehold.

9. Plaintiff procures its groceries for the aforesaid location from Defendant SUPERVALU's distribution network. Over the last 12 months, Plaintiff's stores have purchased some $29,000,000 in groceries from SUPERVALU.

10. In 1992, Plaintiff learned that K-Mart wished to expand its own retail establishment into the space being subleased by Plaintiff. Discussions among K-Mart, SUPERVALU and Plaintiff regarding the amount of compensation to be paid to the tenant and subtenant in exchange for early departure from the location were never concluded. Throughout, however, it was made clear by K-Mart that, whether or not the parties agreed to a settlement resulting in the landlord receiving vacant possession before the end of the term, the lease and sublease would not be renewed when they expire in 1998.

11. In approximately August, 1994, Plaintiff discussed the possible availability of a location at Anniston Plaza, across the highway from its present location. The Anniston Plaza site was a retail ready space of 15,600 square feet. Plaintiff learned that the lessor of the Anniston Plaza location was to be "Rosen Group Properties ("Rosen"), a New York entity represented locally by Anniston Realty.

12. On or about August, 1994, Plaintiff, through its President, Leamon M. Fite, Jr., indicated to Anniston Realty that it was interested in the Anniston Plaza location. Anniston Realty then arranged a meeting between representatives of Plaintiff and representatives of the owners of the location. Such meeting took place at the Anniston Realty Company offices in August, 1994.

13. Rosen proposed a rental for the location of $2.60 per square foot for five (5) years, with two five-year renewals at $2.85 and $3.10. Given that this was somewhat higher than Plaintiff had anticipated, Mr. Fite asked for an agreement that he be given 14 days within which to "crunch the numbers." The Rosen representative, a Mr. James, accepted this proposal and agreed that if Plaintiff agreed to the rental amount he had proposed, the lease would go to Discount Foods. Mr. James said that the offer would remain open. for 14 days and if Plaintiff accepted the proposal, then "we have a deal," whereupon the parties shook hands to seal their bargain.

14. Further, after Plaintiff's meeting with Rosen, a representative of Anniston Realty telephoned Plaintiff and advised him that Gregerson's had also bid on the location, but Gregerson's bid was much lower than the one Plaintiff had submitted.

15. On September 1, 1994, well within the 14 days referenced in Paragraph 11 above, Plaintiff wrote to Rosen's offices in New York and accepted the offer delivered during the meeting in Anniston, Alabama.

16. However, shortly thereafter, Anniston Realty announced to Plaintiff that Gregerson's had bid a higher rental and se cured the lease, and that Plaintiff's "offer-" was not accepted. Plaintiff then proposed that it would match or exceed any commitment by Gregerson's, but this proposal was rejected.

17. Gregerson's stated to Rosen and to Anniston Realty that it intended to use the Anniston Plaza location for a Safe-A-Lot store. Save-A-Lot has granted to Gregerson's the exclusive right to Save-A-Lot franchise locations in Calhoun County.

18. Plaintiff had indicated to Defendants after the meeting with Rosen in Anniston that it had secured the Anniston Plaza location and wished to discuss with Save-A-Lot the possibility of obtaining a Save-A-Lot franchise. Plaintiff made clear, however, that obtaining such a franchise was not a precondition for its successful operation of the location.

19. Plaintiff believes Defendants would benefit by having Gregerson's rather than Plaintiff in the Anniston Plaza location in at, least the following ways:

a. SUPERVALU would continue to receive. the rental override of $500 per month on the K-Mart location now occupied by Plaintiffs until the lease ends in 1998.

b Save-A-Lot would be assured of a Save-A-Lot franchise store in Anniston, Alabama, from which it would derive profits both from sale of groceries and from franchising fees.

c SUPERVALU would be assured of continued grocery purchases from Plaintiff Is present K-Mart location until 1998. Moreover, the more successfully Plaintiff is able to deal with the competition from Gregerson's, the more groceries Defendants SUPERVALU and SAVE-A-LOT are able to sell at both locations.

20. Defendant Gregerson's would benefit by gaining access to the market for groceries in a location which Plaintiff has spent years building. .

21. In order to secure these benefits to themselves, Defendants interfered with Plaintiff's legitimate expectation of concluding the Anniston Plaza lease, and thereby precluded Plaintiff's operating a successful and profitable retail store at that location. They did so by:

a Providing Save-A-Lot stationary to Gregerson's and permitting Gregerson's to present its bid to Rosen on Save-A-Lot letterhead, although Gregerson's is not a Safe-A-Lot subsidiary or division;

b Encouraging Rosen to believe that Safe-A-Lot and/or SUPERVALU stood behind Gregerson's bid, lending to it a level of apparent financial backing which Plaintiff, a

small local company, could not possibly match;

c On information and belief, divulging to Gregerson's the rental Plaintiff had agreed to pay, thereby permitting Gregerson's to submit a higher bid;

d On information and belief, disseminating and/or intimating to Rosen negative information about Plaintiff, causing Rosen to believe that Plaintiff was financially unstable or would otherwise be unable to fulfill the terms of the lease.

22. The lease for the Anniston Plaza site was thereafter signed between Rosen and Gregerson's and Gregerson's Save-A-franchise operation has opened at that location in the Anniston Plaza on McClellan Boulevard.

23. The loss of the Anniston Plaza location and lease has had a devastating effect on Plaintiff, in that it now has to compete against a grocery literally across the street until 1998, and will lose its present location in the area in 1998. Plaintiff conservatively estimates that it will lose at least 10 to 15 percent of its gross sales due to Defendants, actions, and its store now has a loss of $88,792.85 for the period from June 18, 1995 through December 30, 1995, as compared to a profit during that same period in the previous year.

FIRST CAUSE OF ACTION
Tortious Interference with Contractual and Business Relations

24. Plaintiff realleges and reavers each and every allegation set out in Paragraphs 1 through 21 as though fully set out herein.

25. Defendants jointly and severally tortiously interfered with Plaintiff's contractual and business relations and with its legitimate expectation that if it met the price set by Rosen Group Properties, it would be awarded the lease on the Anniston Plaza location.

26. Defendants were aware of the consequences for Plaintiff of not obtaining the Anniston Plaza location lease and they deliberately and wantonly acted in their own self-interest to thwart Plaintiff's expectation and to maximize their own profit.

27. WHEREFORE, Defendants and each of them are liable to Plaintiff in an amount measured by the actual and provable losses suffered by Plaintiff, as well as punitive and exemplary damages to be established by a jury.

SECOND CAUSE OF ACTION
Unfair Competition: Common Law

28. Plaintiff realleges and reavers each and every allegation set out in Paragraphs 1 through 21 as though fully set out herein.

29. Defendants SUPERVALU and Safe-A-Lot's actions as alleged above and GREGERSON'S use of the rent offer figure in order to outbid constituted the tort of unfair competition at common law, in that Defendants made use of

their superior bargaining position to further their own pecuniary objectives at Plaintiff's expense, in a manner calculated not to achieve competitive advantage, but rather to inflict disproportionate harm to Plaintiff.

30. WHEREFORE, Defendants and each of them are liable to Plaintiff in an amount measured by the actual and provable losses suffered by Plaintiff, as well as punitive and exemplary damages to be established by the jury.

THIRD CAUSE OF ACTION
Trade Secrets; Monopoly; Restraint of Trade

31. Plaintiff realleges and reavers each and every allegation set out in Paragraphs 1 through 28 as though fully set out herein.

32. It is Plaintiff's belief that Defendants SUPERVALU and/or Save-A-Lot, acting negligently, with gross negligence and/or wantonly, revealed sensitive trade secret information with regards to its conversations with Plaintiff and that Defendant Gregerson's acted upon said information in an effort to secure a contract on the premises made the basis of this lawsuit.

33. WHEREFORE, Defendants and each of them are liable to Plaintiff in an amount measured by the actual and provable losses suffered by Plaintiff, as well as punitive and exemplary damages to be established by the jury.

WHEREFORE, Plaintiff Discount Foods, Inc. prays for an award of compensatory damages and punitive damages in an amount to be determined by a jury.

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OF COUNSEL:

HARE, WYNN, NEWELL & NEWTON

PLAINTIFFS DEMAND A TRIAL BY A STRUCK JURY IN THE ABOVE- STYLED CAUSE.

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Of Counsel

PLEASE SERVE DEFENDANTS:

SUPERVALU
11840 Valley View Road
Eden Prairie, Minnesota 55344

MORAN FOODS, INC. D/B/A SAVE-A-LOT LTD
8474 Delport Drive
St. Louis, Missouri 63114

GREGERSON'S HOLDINGS, INC.
644 Walnut Street
Gadsden, Alabama 35999